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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: March 05,2015

\+ W.P.(C) 7101/2014

ICICI LOMBARD GIC LTD ..... Petitioner

Through: Mr. Saurabh Kripal and Mr. Anilok Shori, Advocates.

versus

VISHAL HIRA MERCHANTS PVT LTD. & ORS. ..... Respondent

Through: Mr. Parvinder Singh and Ms. Supreet Kaur, Advocates for R-1 to R-6. Mr. Kunal Tandon, Ms. Snigdha Sharma and Ms. Kanika Jain, Advocates for R-7.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner has preferred this writ petition against the order of the Debts Recovery Appellate Tribunal (hereinafter referred to as "the DRAT") dated 25.09.2014 in I.A No. 675/2014 refusing to grant stay on the order dated 29.08.2014 passed by the Debt Recovery Tribunal. The effect of which is that the petitioner is required to deposit 50% of the amount claimed by the first respondent to sixth respondent (hereafter called "the borrowers").

2. The borrowers have availed credit facilities from the seventh respondent, HDFC Bank Ltd. (hereinafter called "the Bank"). This was for the purposes of business. In the course of its commercial activities, the borrowers incurred losses and they sought indemnification from the petitioner, the insurer. The petitioner rejected the claim; this led to initiation of proceedings by the borrowers before the National Consumer Dispute Redressal Commission (NCDRC). Those proceedings are pending. In the meanwhile, the Bank proceeded to initiate proceedings for recovery of the amounts due to it by filing an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the RDDBFI Act") before the DRT. Concededly, those proceedings, being OA No. 35/10 are pending. Earlier, the Bank had also initiated proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI"). The borrowers approached the DRT under Section 17 of SARFAESI by filing SA No. 300/2009. In those proceedings, the borrower impleaded the insurer too as a party-respondent. The DRT by its order dated 29.08.2014, directed the insurer to deposit 50% of the amount claimed by the borrowers, as a pre-condition for contesting the proceedings. Interestingly, the borrower impleaded the insurer even though the seventh respondent-Bank had no claim against the insurer. The insurer made an application claiming that it was neither a necessary nor a proper party and sought deletion in an application that has not yet been dealt with and disposed of. That application for deletion is pending. The insurer felt aggrieved and approached the DRAT urging that the direction to deposit 50% of the amount was not sustainable. The DRAT has by the impugned

order rejected that application.

3. We have heard counsel for the parties. Ld. Counsel for the Bank submitted, at the outset, that since there was no stay of proceedings, the DRAT has, in fact, by its order dated 02.02.2015 dismissed the insurer's appeal itself. The copy of the said order was produced and is extracted below:-

"DEBTS RECOVERY APPELLATE TRIBUNAL, DELHI
I.A. No. 675/2014
Inward No. 512/2014
In S.A. No. 300/2009 (Delhi-III)

ICICI Lombard General Insurance Co. Ltd.
Vs.
Vishal Kumar Grover & Ors.

02.02.2015 ***Mr. Justice Ranjit Singh***
Present: *Mr. Amilok Shori representing Mr. Amit Tyagi, counsel for the appellant.*
Mr. Sheshank Shekhar, counsel for the respondents.

On 15th December, 2014 the counsel for the appellant had placed before me order passed by the Division Bench staying direction issued by the Tribunal below to deposit 50% of the insurance amount till the next date of hearing i.e. 10th December, 2014. This order was taken on record.

While on one hand the appellant has approached the High Court against the impugned order and on the other has filed the present appeal. I am of the view that the appellant cannot be permitted to avail two separate remedies to impugn the same order. The appellant will have to either pursue its remedy before the High Court or before this Tribunal. It is expected from the appellants that it has disclosed in the Writ Petition that he has an alternative remedy of appeal which it *has invoked. Since the Writ Petition filed by the appellant has been entertained, it would not be legally appropriated to permit the appellant to pursue its present appeal. The present appeal is accordingly dismissed as not maintainable as the appellant has filed a Writ Petition to impugn the same order.*

Sd/-
CHAIRMAN"

4. Counsel for the insurer submits that regardless of the outcome of this order, this court should intervene in the matter since the impugned order is unsustainable on every count. It was urged that in the absence of any determined liability on the insurer's part, the DRT's direction is not based on any principle. Counsel for the borrowers urged that the insurer illegally withheld the amounts due by rejecting the valid claims made on account of the law.

5. Ld. Counsel submitted that this court may examine the merits before passing any order which would ultimately affect the borrowers' rights, especially with regard to property, given that these proceedings emanate from the action taken under SARFAESI.

6. This court has carefully considered the submissions. The insurer in this case was impleaded by the borrowers. There is no material on record to suggest that the Bank had any claim against the insurer. No doubt, the borrowers have a claim pending before the NCDRC on account of alleged wrongful rejection of the insurer's claim for losses. However, the pendency of those proceedings *ipso facto* would not lead to any entitlement to claim any amount since the borrower's claim against the insurer is yet to be determined and the liability, if any, is the inchoate. As and when it is

determined, if an adverse order is made against the insurer, it could be directed to satisfy the claim. However, that is not so here; there is no existing determined liability of the insurer vis-a-vis the borrower. Such being the case, the DRT's initial direction to the insurer to deposit 50% of the amount claimed by the Bank is not based on any known legal principle or on any statutory liability. Under the circumstances, the DRAT could not have, in our opinion, mechanically affirmed the order. That it did so and dismissed the appeal, in our opinion cannot blind this court to the fact that the basis for the DRTs direction is itself questionable and suspect.

7. In view of the above discussion, the impugned orders of the DRT and the DRAT are hereby set aside. The subsequent order of the DRAT dated 02.02.2015 likewise cannot be sustained. The matters are remitted to the DRT which shall proceed and dispose of the matters before it (OA 35/2010 and SA 300/2009) and all connected proceedings including the insurer's application. The DRT shall render its final order expeditiously, preferably within three months from today.

8. Writ petition is allowed in above terms.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

MARCH 05, 2015
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